

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**AMEREN TRANSMISSION COMPANY OF)
ILLINOIS)**

Docket No. 14-0438

**Petition for an Order Pursuant to Section)
8-509 of the Public Utilities Act Authorizing)
Use of Eminent Domain Power)**

**INITIAL BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

CHRISTINE F. ERICSON
KIMBERLY J. SWAN
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
Email: cericson@icc.illinois.gov
kswan@icc.illinois.gov

Counsel for the Staff of the
Illinois Commerce Commission

July 21, 2014

Table of Contents

I. Introduction	1
II. Statutory Authority and Standard of Review	3
III. Contact with Landowners	6
IV. Explanation of Compensation Offer	7
V. Reasonableness of Compensation Offers	7
VI. Responsiveness to Landowner Concerns.....	8
VII. Usefulness of Further Negotiations.....	8
VIII. Conclusion	8

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**AMEREN TRANSMISSION COMPANY OF)
ILLINOIS)**

Docket No. 14-0438

**)
)
)
)
Petition for an Order Pursuant to Section)
8-509 of the Public Utilities Act Authorizing)
Use of Eminent Domain Power)**

**INITIAL BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”) (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the instant proceeding.

I. Introduction

This matter comes before the Commission on the Ameren Transmission Company of Illinois’ (“ATXI” or “Company”) Petition for an order Authorizing the use of eminent domain pursuant to Section 8-509 of the Illinois Public Utilities Act (“Act”), 220 ILCS 5/8-509. See, generally, Petition. The Commission had previously granted ATXI authority to construct a 345 kilovolt (“kV”) overhead transmission facility in, among other places, Champaign County, in Illinois, as will be discussed more fully *infra*.

On June 23, 2014, ATXI filed a Verified Petition (“Petition”), testimony and exhibits in support of its request for eminent domain authority to obtain rights across

certain properties between Sidney and Rising, Illinois, pursuant to Section 8-509 of the Act (Petition, 1, and Petition Exhibit A, 2-4.) ATXI seeks a 150-foot wide easement across private properties for portions of ATXI's planned 345 kV overhead transmission line in Champaign County. (Petition, Ex. A; ATXI Ex. 2.3.) The Commission has already granted ATXI a Certificate of Public Convenience and Necessity pursuant to Section 8-406.1 of the Act and an order pursuant to Section 8-503 of the Act authorizing ATXI to construct this 345 kV transmission line. Ameren Transmission Company of Illinois, ICC Order Docket No. 12-0598, 133-135 (August 20, 2013).

This eminent domain docket does not include all of the properties across which ATXI will seek eminent domain authority in conjunction with Docket 12-0598; rather, it includes only certain properties across which ATXI requires land rights between Sidney and Rising, as illustrated by the maps shown on pages 2 through 4 of Exhibit A to ATXI's petition. (Staff Ex. 1.0, 3.) ATXI's 345 kV transmission line will ultimately extend from the Mississippi River to Indiana, and Staff understands that ATXI plans to file further petitions seeking eminent domain authority for the segments of the transmission line that pass through geographic areas not covered in this docket or in Docket Nos. 14-0291 and 14-0380. (Staff Ex. 1.0, 3-4). Through its Petition in the instant proceeding, ATXI seeks eminent domain authority to acquire 10 easements across 10 properties between Sidney and Rising ("Unsigned Properties"). Id.

Cordier Farms, LLC ("Cordier Farms" or "Landowner") intervened in the docket, but did not submit direct testimony or appear at the evidentiary hearing. ATXI and Staff submitted direct testimony. No party filed rebuttal testimony, but ATXI filed a Notice of Signed Properties on July 14, 2014 indicating ATXI had successfully negotiated

easements with four¹ of the original ten easements at issue in this proceeding. As such, ATXI withdrew its request for eminent domain authority as to those properties. An evidentiary hearing was held on July 17, 2014, wherein the prepared direct testimonies of all witnesses were admitted via affidavit.

II. Statutory Authority and Standard of Review

Section 8-509 of the Act provides in relevant part as follows:

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain. If a public utility seeks relief under this Section in the same proceeding in which it seeks a certificate of public convenience and necessity under Section 8-406.1 of this Act, the Commission shall enter its order under this Section either as part of the Section 8-406.1 order or at the same time it enters the Section 8-406.1 order. If a public utility seeks relief under this Section after the Commission enters its order in the Section 8-406.1 proceeding, the Commission shall issue its order under this Section within 45 days after the utility files its petition under this Section.

220 ILCS 5/8-509.

The Commission has found that a request under Section 8-509 is not a mere formality; rather, a showing must also be made that the utility made a reasonable attempt to acquire the property before it will be allowed to exercise eminent domain authority in circuit court. As the Commission noted in its Order in Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company, ICC Order

¹ ATXI successfully negotiated easements for the properties owned by (i) ASTA Trust Number One Agreement Dated December 22, 29176 (Tax ID number 32-20-06-200-001; ATXI designation ILRP_RS_CH004); (ii) Mr. Adolf M. Lo (Tax ID number 29-26-15-300-004; ATXI designation ILRP_RS_CH_068; (iii) Ms. Renee C. Lo (Tax ID number 29-26-16-400-005; ATXI designation ILRP_RS_CH_061); and (iv) Premier Partners II, Limited Partnership (Tax ID number 29-26-06-200-003; ATXI designation ILRP_RS_CH_035).

Docket No. 06-0706 (March 11, 2009) (“Illinois Power Order”):

[G]ranting relief under Sections 8-406 and 8-503 does not render a later request under Section 8-509 a mere formality. While it is true that authority under Section 8-503 is specifically required before eminent domain authority can be granted under Section 8-509, a showing must also be made that the utility made a reasonable attempt to acquire the property before it will be allowed to exercise eminent domain authority in circuit court. The Commission is not prepared to say that even after a utility makes a reasonable attempt to acquire the property that it would automatically receive eminent domain authority under Section 8-509. Nor will the Commission assume that a circuit court would permit the exercise of eminent domain by a utility that has received authority under Section 8-509 from the Commission.

Illinois Power Order at 88-89 (emphasis added).

In other words, in the Commission’s view, receipt of authority under Sections 8-406 (and by extension Section 8-406.1) and 8-503 is a necessary, but not a sufficient, condition for an award of eminent domain authority under Section 8-509. A utility must also demonstrate that it has negotiated in good faith with landowners and has nonetheless failed to obtain all of the necessary parcels. Id. The Commission has reiterated its determination that utilities should negotiate prior to receiving eminent domain authority in several subsequent proceedings. See, e.g., Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company, ICC Order Docket No. 10-0173, 14 (November 23, 2010); Central Illinois Public Service Company d/b/a AmerenCIPS, ICC Order Docket No. 07-0532, 13-14 (May 6, 2009). In keeping with prior Commission Orders, ATXI should be required to demonstrate it has negotiated in good faith with landowners before eminent domain under Section 8-509 is granted in any future proceedings.

In its Final Order in ICC Docket No. 10-0173, the Commission stated:

The Commission expects Staff to inquire regarding and/or verifying a

utility's efforts to obtain property through negotiation in future cases concerning Section 8-509.

Illinois Power Company, ICC Order Docket No. 10-0173, 14 (November 23, 2010).

Further, in its Final Order in ICC Docket No. 13-0516, the Commission stated:

The Commission notes that issues surrounding landowner concerns about the easement and easement document, including pole placement, are relevant for a determination as to whether the Company has made reasonable attempts to acquire the property and are within the scope of a Section 8-509 proceeding. In future proceedings, Staff should address any landowner concerns within their area of expertise, for example pole location or vegetation issues.

Ameren Illinois Company, ICC Order Docket No. 13-0516, 10, (October 23, 2013).

In its Final Order in Docket No. 13-0456, the Commission provided guidance for evaluating whether a company has made a reasonable effort to negotiate for the easements it needs to construct an authorized transmission line. Ameren Illinois Company, d/b/a Ameren Illinois, ICC Order Docket No. 13-0456, 3 (September 10, 2013) ("AIC Order"). Specifically, the Commission stated that prior to the Commission authorizing a utility to request eminent domain authority in circuit court under Section 8-509, the utility must show that it made a reasonable attempt to acquire the property at issue through negotiation. Id., citing Illinois Power Company, ICC Order Docket No. 06-0706, 88 (March 11, 2009). In that case, the Commission evaluated whether AIC made a reasonable effort to negotiate for the easements it needed to construct the authorized transmission line. In making its determination, the Commission relied upon five factors: (1) the number and extent of contacts with the landowners; (2) whether the utility has explained its offer of compensation; (3) whether the offers of compensation are comparable to offers made to similarly situated landowners; (4) whether the utility has

made an effort to address landowner concerns; and (5) whether further negotiations will likely prove fruitful. (AIC Order, 4.)

III. Contact with Landowners

ATXI representatives or representatives of ATXI's contract land agent, Contract Land Staff, have contacted each landowner for the purpose of acquiring an easement at least fifteen times. (Staff Ex. 1.0, 7.) ATXI provides a summary of its contacts with each of the landowners of the properties. (See ATXI Ex. 2.3.) In addition, ATXI submitted confidential workpapers for each Unsigned Property that include the date and time of each successful and unsuccessful attempt to contact the landowners. (Staff Ex. 1.0, 7.) Staff does not take issue with the number of times ATXI contacted landowners for the purpose of negotiating for the required easements.

In earlier related Docket Nos. 14-0291 and 14-0380, Staff expressed concern that ATXI used too many different representatives to contact each identified landowner. (ICC Staff Ex. 1.0, 9-10.) To limit the number of different representatives that contact each landowner, ATXI witness Amanda Sloan states that, as of June 23, 2014, ATXI and its agent, Contract Land Staff, implemented a new policy wherein each landowner will be assigned a single land agent who will be the primary contact for all landowner communications. Id. ATXI and Contract Land Staff's pledged implementation of this revised policy as described by ATXI witness Sloan adequately addresses Staff's concern regarding too many different ATXI representatives contacting each individual landowner. Id.

IV. Explanation of Compensation Offer

ATXI's property evaluations and financial offers to landowners are based upon a third-party independent appraiser's determination of the market value of each property. (Staff Ex. 1.0, 7.) ATXI testifies that its initial offers for property that does not overlap a pre-existing easement are approximately 90% of the fee value of property subject to the easement, and include payment for crop damage resulting from the transmission line installation, if applicable. Id. If the requested easement does overlap a pre-existing easement that AIC's legacy company has previously purchased, then ATXI states that its offers are approximately 50% of the fee value for the property. Id. When disagreements regarding ATXI's valuation occur, ATXI invites landowners to present their own appraisal for ATXI to consider during negotiations. Id., 8. ATXI used a standard calculation worksheet to explain its offers to each of the affected landowners and provided the landowners with a copy of the appraisal report that ATXI used to determine the amount of compensation offered. (ATXI Ex. 1.0, 10.)

V. Reasonableness of Compensation Offers

ATXI used the same third-party appraisal firm to determine all of its compensation offers. (Staff Ex. 1.0, 8; ATXI Ex. 1.0, 12.) Each appraisal included recent sales prices of similarly situated properties. (ATXI Ex. 1.4, 8.) Staff witness Greg Rockrohr, an electrical engineer, offers no opinion regarding the adequacy of ATXI's monetary offers. (Staff Ex. 1.0, 8-9.)

VI. Responsiveness to Landowner Concerns

Staff found that ATXI has made reasonable attempts to address landowner concerns. ATXI Ex. 2.3 provides several examples of changes in alignment and/or easement terms requested by landowners that ATXI agreed to when negotiating with landowners. (Staff Ex. 1.0, 8.) With respect to Unsigned Properties, Staff understands that disagreement about the appropriate level of compensation has prevented negotiations from succeeding. Id., 9.

The Commission should be aware that ATXI could construct its proposed 345 kV transmission line across the parcel with ATXI Internal Tract Number ILRP_RS_CH_005 by overlapping a pre-existing 132-foot wide easement rather than obtaining a new 150-foot wide additional easement. However, doing so would require replacing the existing 138 kV poles with poles that would support both the 138 kV and 345 kV transmission lines, which would result in higher project costs. (Staff Ex. 1.0, 5-6.) Therefore, Staff finds that the Commission should grant ATXI eminent domain authority for the parcel with ATXI Internal Tract Number ILRP_RS_CH_005. Id.

VII. Usefulness of Further Negotiations

Staff does not take a position on the usefulness of further negotiations (Staff Ex. 1.0, 9).

VIII. Conclusion

For the reasons set forth *supra*, Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with

this Initial Brief.

Respectfully submitted,

/s/

CHRISTINE F. ERICSON
KIMBERLY J. SWAN

Counsel for the Staff of the Illinois
Commerce Commission

July 21, 2014

CHRISTINE F. ERICSON
KIMBERLY J. SWAN
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
Email: cericson@icc.illinois.gov
kswan@icc.illinois.gov

Counsel for the Staff of the
Illinois Commerce Commission